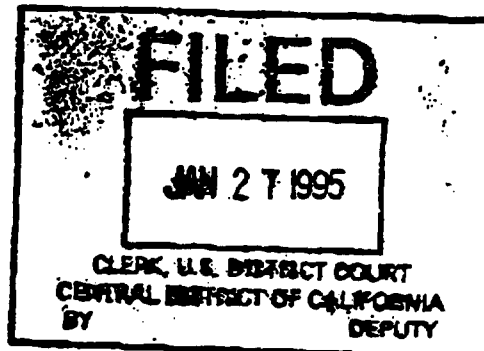


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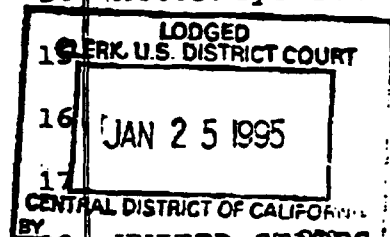
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14 Attorneys for Plaintiff, United States of America



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 GERALD A. NIESEN,

19 Defendant.

JAN 30 1995
THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).
CV-N-93-4828
CONSENT DECREE BETWEEN
THE UNITED STATES OF
AMERICA AND GERALD A.
NIESEN

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	1
II.	<u>JURISDICTION</u>	2
III.	<u>PARTIES BOUND</u>	2
IV.	<u>DEFINITIONS</u>	3
V.	<u>REIMBURSEMENT OF RESPONSE COSTS</u>	4
VI.	<u>STIPULATED PENALTIES</u>	7
VII.	<u>COVENANTS NOT TO SUE BY PLAINTIFF</u>	7
VIII.	<u>COVENANTS BY SETTLING DEFENDANT</u>	8
IX.	<u>WARRANTY OF SETTLING DEFENDANT</u>	9
X.	<u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u>	9
XI.	<u>NOTICES AND SUBMISSIONS</u>	11
XII.	<u>EFFECTIVE DATE</u>	12
XIII.	<u>RETENTION OF JURISDICTION</u>	12
XIV.	<u>SIGNATORIES/SERVICE</u>	12

I. BACKGROUND

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint against Gerald A. Niesen ("Settling Defendant") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-149, 100 Stat. 1613, for the recovery of response costs incurred by the United States and for the recovery of punitive damages for failure to comply with the administrative order issued in connection with the alleged release or threatened release of hazardous substances at the property described as 1335 La Purisima Road, in the city of Lompoc, in Santa Barbara County, California ("the Site");

WHEREAS, the United States has alleged that at all relevant times herein Settling Defendant owned the property which comprises the Lompoc Plating Site;

WHEREAS, the United States has alleged that the release or threatened release of hazardous substances at or from the Site has caused the United States to incur response costs;

WHEREAS, the United States has alleged that Settling Defendant failed to take proper action in accordance with the unilateral administrative order issued to him by EPA;

WHEREAS, the United States and the Settling Defendant agree, and this Court, by entering this Decree, finds that settlement of

1 regulations promulgated under CERCLA shall have the meaning
2 assigned to them in CERCLA or in such regulations. Whenever
3 terms listed below are used in this Consent Decree, the following
4 definition shall apply:

5 A. "CERCLA" shall mean the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980, 42 U.S.C.
7 §§ 9601 et seq., as amended by the Superfund Amendments and
8 Reauthorization Act of 1986, Pub.L. No 99-149, 100 Stat. 1613.

9 B. "Consent Decree" shall mean this Decree.

10 C. The term "days" shall mean calendar days.

11 D. "EPA" shall mean the United States Environmental
12 Protection Agency and any successor departments or agencies of
13 the United States.

14 E. "National Contingency Plan" or "NCP" shall mean the
15 National Oil and Hazardous Substances Pollution Contingency Plan
16 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
17 codified at 40 C.F.R. Part 300, including, but not limited to,
18 any amendments thereto.

19 F. "Parties" shall mean the United States and the Settling
20 Defendant.

21 G. "Plaintiff" shall mean the United States of America.

22 H. "Response Costs" shall mean all costs, including but
23 not limited to direct and indirect costs together with accrued
24 interest, that the United States incurred up to the effective
25 date of this Consent Decree in response to the release or
26 threatened release of hazardous substances at or in connection
27 with the Site, including, but not limited to, payroll costs,

1 contractor costs, travel costs, laboratory costs, attorneys fees,
2 and the costs of this litigation.

3 I. "Settling Defendant" shall mean Gerald A. Niesen.

4 J. "Site" shall mean the property described as 1335 La
5 Purisima Road, Lompoc, Santa Barbara County, California.

6 K. "United States" shall mean the United States of
7 America.

8 V. REIMBURSEMENT OF RESPONSE COSTS

9 4. Payment and Interest

10 The Settling Defendant shall pay to the Plaintiff the
11 sum of \$200,000 (the "Settlement Amount"), plus interest
12 calculated under this Consent Decree at the rate specified for
13 interest on investments of the Hazardous Substance Superfund
14 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for
15 reimbursement of Response Costs incurred by the United States and
16 for punitive damages with respect to the Lompoc Plating Site as
17 specified below. Interest shall begin to accrue on the
18 Settlement Amount as of the date this Consent Decree is entered
19 by the Court.

20 A. Payment Plan

21 Within 30 days of entry of this Consent Decree, Settling
22 Defendant shall pay the sum of \$20,000 (Twenty Thousand Dollars)
23 to the United States for punitive damages as a result of Settling
24 Defendant's failure to take proper action in accordance with the
25 administrative order issued to Settling Defendant pursuant to
26 Section 106(a) of CERCLA, 42 U.S.C § 9606(a).

1 Within sixty (60) days of the entry of this Consent Decree,
2 Settling Defendant shall begin making monthly payments of \$700
3 (Seven Hundred Dollars). Such monthly payments shall be made by
4 the first day of each month following the first \$700 payment.
5 Such monthly payments shall continue to be paid until the full
6 Settlement Amount has been paid as set forth below. All payments
7 by Settling Defendant shall be made by certified or cashier's
8 check to the "EPA Hazardous Substance Superfund" and shall be
9 remitted to EPA Region IX, Attention Superfund Accounting, P.O.
10 Box 360863M, Pittsburgh, Pennsylvania, 15251.

11 The parties agree that Settling Defendant intends to sell
12 the Site. Upon the sale of the Site, payment of the remaining
13 balance owed the United States, plus interest, shall be made
14 directly from escrow from the proceeds of the sale. Within 10
15 days of receipt of notice from Settling Defendant that the
16 proceeds of the sale of the Site have been deposited in escrow,
17 the United States shall deposit with the escrow for the sale of
18 the Site a release sufficient for recording to release the
19 Superfund lien on the Site. The lien release shall not be
20 released from escrow for recording and filing until payment of
21 the full \$200,000, plus interest, has been made to the United
22 States.

23 B. Payment Deadline

24 If the Site is not sold within eighteen (18) months of the
25 date of entry of this Consent Decree, then the remaining balance
26 of the Settlement Amount owed the United States, plus interest,
27 shall be due in full within thirty (30) days from this eighteen
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1 (18) month deadline. Upon a showing by Settling Defendant that
2 he has exercised best efforts to sell the Site and the Site has
3 not been sold by the eighteen (18) month deadline, the United
4 States may extend the time for the payment of the remaining
5 balance owed on the Settlement Amount by six (6) months. The
6 United States' determination regarding Settling Defendant's
7 efforts to sell the Site is not subject to judicial review.

8 5. In the event that the Settling Defendant should fail to
9 pay any sum due and owing under this Consent Decree, then without
10 further order of the Court this Consent Decree shall be
11 considered an enforceable judgment for purposes of post-judgment
12 collection in accordance with Federal Rule of Civil Procedure 69
13 and other applicable statutory authority. The parties agree that
14 interest shall continue to accrue on the unpaid balance of any
15 payments required under Paragraph 4 of this Consent Decree at the
16 rate specified in Paragraph 4.

17 6. If the United States brings an action to collect any
18 payment required under Section V, the Settling Defendant shall
19 reimburse the United States for all costs of such action,
20 including but not limited to, attorneys' fees.

21 7. Payments made under Paragraphs 5 and 6 of this Section
22 shall be in addition to such other remedies or sanctions
23 available to Plaintiff by virtue of Settling Defendant's failure
24 to make timely payments under Section VI.

25 VI. STIPULATED PENALTIES

26 8. In the event that the Settling Defendant fails to make
27 the lump sum payment of \$20,000 described in Section V within 30

1 days of the entry of this Consent Decree, Settling Defendant
2 shall pay a penalty of \$500 (Five Hundred Dollars) per day (plus
3 the interest specified in Paragraph 4 of this Decree) for each
4 and every day he fails to make the lump sum payment.

5 In the event the Settling Defendant fails to make the
6 monthly installment payments described in Paragraph 4 when due
7 Settling Defendant shall pay a penalty of \$250 (Two Hundred Fifty
8 dollars) per day (plus the interest specified in Section V of
9 this Decree) for each and every day that he fails to make a
10 monthly installment payment. Stipulated penalties shall be paid
11 in the manner prescribed in Section V of this Decree for the
12 reimbursement of response costs.

13 VII. COVENANTS NOT TO SUE BY PLAINTIFF

14 9. Upon receipt by the United States of the payments for
15 Response Costs and punitive damages required by Section V of this
16 Consent Decree and any money owed the United States for Settling
17 Defendant's failure to comply with the terms set forth in this
18 Consent Decree, the United States covenants not to sue or to take
19 administrative action against Settling Defendant under Section
20 107 of CERCLA to recover Response Costs or punitive damages for
21 failure to comply with the administrative order, except as
22 specifically provided in Paragraphs 10, 11, and 12 of this
23 Section. This covenant not to sue extends only to the Settling
24 Defendant and does not extend to any other person.

25 10. The United States reserves, and this Consent Decree is
26 without prejudice to, all rights against Settling Defendant with
27 respect to all other matters, including but not limited to, the
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1 following: (A) claims for recovery of any and all costs not
2 included within the covenant not to sue provided in Paragraph 12
3 of this Section; (B) claims based on a failure by Settling
4 Defendants to meet any requirement of this Consent Decree;
5 (C) liability arising from the past, present, or future disposal,
6 release or threat of release of hazardous substances outside of
7 the Site; (D) liability for damages for injury to, destruction
8 of, or loss of natural resources; (E) criminal liability; and
9 (F) liability for violations of federal or state law.

10 11. Notwithstanding any other provision of this Consent
11 Decree, the United States retains all authority and reserves all
12 rights to take any and all response actions authorized by law.

13 VIII. COVENANTS BY SETTLING DEFENDANT

14 12. Settling Defendant hereby covenants not to sue and
15 agrees not to assert any claims or actions against the United
16 States with respect to the Site or this Consent Decree,
17 including, but not limited to, any direct or indirect claim for
18 reimbursement from the Hazardous Substance Superfund (established
19 pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through
20 Sections 106(b)(2), 111 or 112, of CERCLA, 42 U.S.C.
21 §§ 9606(b)(2), 9611 or 9612, or any other provision of law, any
22 claim against the United States, including any department,
23 agency, or instrumentality of the United States under CERCLA
24 Section 107 of CERCLA, 42 U.S.C. § 9607, related to the Site, or
25 any claims arising out of response activities at the Site.
26 Nothing in this Consent Decree shall be deemed to constitute
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1 preauthorization of a claim within the meaning of Section 111 of
2 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

3 IX. WARRANTY OF SETTLING DEFENDANT

4 Settling Defendant warrants that the financial information
5 set forth in the Financial Statement for Individuals, dated May
6 4, 1993, and attached as Exhibit A, is accurate, and all facts
7 stated were true as of that date. Settling Defendant further
8 warrants that his financial condition has not materially improved
9 since he submitted the Financial Statement for Individuals dated
10 May 4, 1993, and so those facts, which were truly represented,
11 remain accurate. Settling Defendant warrants that he is unable
12 to pay the sum of \$200,000, in one payment, in settlement of the
13 United States' claims against him in this proceeding. Settling
14 Defendant warrants that he is unable to pay any of the amounts
15 demanded by the United States in this proceeding, other than the
16 amounts agreed to in this Consent Decree, during the agreed time
17 period. Provision of false, fictitious, or fraudulent statements
18 or representations to the United States shall make the terms of
19 this Consent Decree null and void and may subject Settling
20 Defendant to criminal penalties under 18 U.S.C. § 1001.

21 X. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

22 13. Nothing in this Consent Decree shall be construed to
23 create any rights in, or grant any cause of action to, any person
24 not a party to this Consent Decree. The preceding sentence shall
25 not be construed to waive or nullify any rights that any person
26 not a signatory to this Consent Decree may have under applicable
27 law. Each of the Parties expressly reserves any and all rights
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1 (including, but not limited to, any right to contribution),
2 defenses, claims, demands, and causes of action which each party
3 may have with respect to any matter, transaction, or occurrence
4 relating in any way to the Site against any person not a party
5 hereto.

6 14. With regard to claims for contribution against Settling
7 Defendant for matters addressed in this Consent Decree, the
8 Parties hereto agree that, upon receipt by EPA of the payments
9 required by Section V, Paragraph 6 of this Consent Decree,
10 Settling Defendant is entitled to such protection from
11 contribution actions or claims as is provided by Section
12 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

13 15. In any subsequent administrative or judicial proceeding
14 initiated by the United States for injunctive relief, recovery of
15 costs, or other appropriate relief relating to the Response
16 Costs, Settling Defendant shall not assert, and may not maintain,
17 any defense or claim based upon the principles of waiver, res
18 judicata, collateral estoppel, issue preclusion, claim-splitting,
19 or other defenses based upon any contention that the claims
20 raised by the United States in the subsequent proceeding were or
21 should have been brought in the instant case; provided, however,
22 that nothing in this Paragraph affects the enforceability of the
23 covenants not to sue set forth in Section VIII (Covenants Not to
24 Sue by Plaintiff).

25 XI. NOTICES AND SUBMISSIONS

26 16. Whenever, under the terms of this Consent Decree,
27 written notice is required to be given or a document is required
28

1 to be sent by one party to another, it shall be directed to the
2 individuals at the addresses specified below, unless those
3 individuals or their successors give notice of a change to the
4 other Parties in writing. Written notice as specified herein
5 shall constitute complete satisfaction of any written notice
6 requirement of the Consent Decree with respect to the United
7 States, EPA, and the Settling Defendant, respectively.

8 As to the United States:

9 John C. Cruden, Chief
10 Environmental Enforcement Section
11 Environment and Natural Resources Division
12 U.S. Department of Justice
13 P.O. Box 7611
14 Ben Franklin Station
15 Washington, D.C. 20044
16 Re: DOJ Case No: 90-11-2-888

14 As to EPA:

15 Brent Maier (H83)
16 Waste Management Division
17 United States Environmental Protection Agency
18 Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94103

19 As to Settling Defendants:

20 Gerald A. Niesen
21 481 Oakhill Drive
22 Lompoc, CA 93436
23 Michael A. Francis, Esq.
24 Demetriou, Del Guercio,
25 Springer & Moyer
26 801 South Grand Avenue
27 Tenth Floor
28 Los Angeles, CA 90017-4613

1 XII. EFFECTIVE DATE

2 17. This Consent Decree shall be effective upon the date of
3 entry by the Court except as otherwise provided herein.

4 XIII. RETENTION OF JURISDICTION

5 18. This Court retains jurisdiction over both the subject
6 matter of this Consent Decree and the Settling Defendant for the
7 duration of the performance of the terms and provisions of this
8 Consent Decree for the purposes of enabling the Parties to apply
9 to the Court at any time for such further order, direction, and
10 relief as may be necessary or appropriate for the construction or
11 modification of this Consent Decree, or to effectuate or enforce
12 compliance with its terms, or to resolve any disputes arising
13 under this Consent Decree.

14 XIV. SIGNATORIES/SERVICE

15 19. Settling Defendant hereby agrees not to oppose entry of
16 this Consent Decree by this Court.


17 SO ORDERED THIS _____ DAY OF JAN 27 1995, 1995.

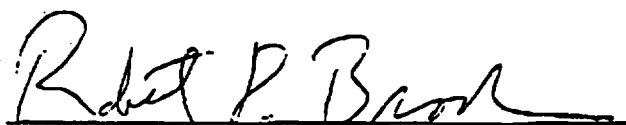
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19 MANUEL L. REAL

20 Manuel Real
21 United States District Judge
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1 We hereby consent to entry of the Consent Decree in the
2 matter of the United States v. Gerald A. Niesen, Civil Action No.
3 CV-93-4828R.
4


5 FOR PLAINTIFF THE UNITED STATES OF AMERICA:
6

7 
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9 Assistant Attorney General
10 Environmental Enforcement Section
11 Environment and Natural Resources
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13 United States Department of Justice
14 Washington, D.C. 20530

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25 United States Attorney
26 LEON W. WEIDMAN
27 Assistant United States Attorney
28 Chief, Civil Division

BY:

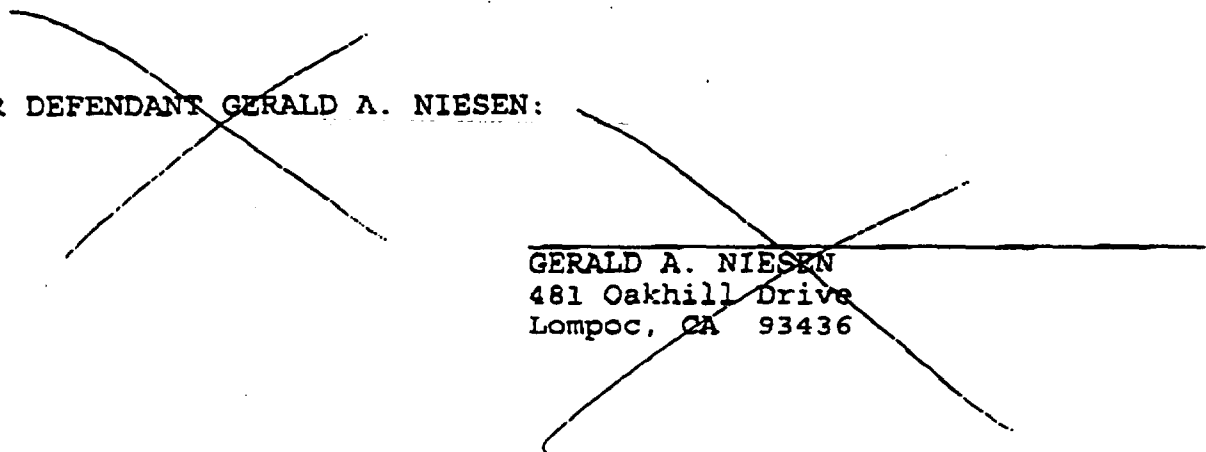
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FELICIA MARCUS
Regional Administrator
United States Environmental
Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

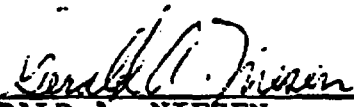
FOR DEFENDANT GERALD A. NIESEN:


GERALD A. NIESEN
481 Oakhill Drive
Lompoc, CA 93436

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~~FELICIA MARCUS
Regional Administrator
United States Environmental
Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105~~

FOR DEFENDANT GERALD A. NIESEN:


GERALD A. NIESEN
481 Oakhill Drive
Lompoc, CA 93436

PROOF OF SERVICE BY MAILING

I, Marilen Iliscupides, declare:

I am over the age of 18 and not a party to the within action. I am employed by the office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On January 25, 1995, I served a copy of: **CONSENT DECREE BETWEEN THE UNITED STATES OF AMERICA AND GERALD A. NIESEN** on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Date of mailing: January 25, 1995. Place of mailing: Los Angeles, California.

Addressed to: SEE ATTACHED SERVICE LIST

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 25, 1995 at Los Angeles, California.

Marilen Iliscupides
MARILEN ILISCUPIDES

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SERVICE LIST

Gregory D. Trimarche, Esq.
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Gerald A. Niesen
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Lompoc, CA 93436